



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:
WILLIAM P. APPS et al.

Serial No. 09/439,427

Filed: November 15, 1999

For: PLASTIC PALLET

Attorney Docket No.: RPC 0491 PUS

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Examiner: J. Wilkens

APPELLANT'S REPLY BRIEF

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Sir:

This is a reply to the Examiner's Answer mailed August 22, 2001.

REMARKS

Initially, Appellant notes that all arguments made in the Appeal Brief filed on June 1, 2001, are incorporated herein. The following comments are directly responsive to the statements made in the Examiner's Answer, which are similar to those made in the Final Rejection.

In section (11) of the Answer (page 5), the Examiner asserts that elements 32 and 40 "are part of the deck surface" in Wyler. The Examiner then states "[t]here is no

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structure claimed that would limit a pallet deck structure as otherwise." In response, Appellant points out that claims 22, 26, and 31 each include scuffing a top or outer surface of an upper or first deck, and a bottom or inner surface of a lower or second deck. Thus, the Examiner's statements are not understood, as the plain meaning of the claim language appears to have been overlooked. Despite the Examiner's characterization, Wyler does utilize the term "deck" and "surface" in the same manner as Appellant's claims. For example, Wyler clearly identifies the deck as element 14 having an upper surface 20. Channels 30 must be provided in the deck to accommodate elements 32. Element 32 is a "reinforcing bar," and element 40 is a raised surface on a side positioning member 38 (note: with regard to the latter, Wyler does not teach that surface 40 has an anti-skid surface, and therefore, Appellant does not believe this element has any relevancy to the claimed subject matter.) As such, the Examiner's position that elements 32 are part of the deck surface is not supported by the reference itself.

In any event, Appellant reiterates that nowhere do the cited references suggest scuffing the surface of a pallet deck. With specific reference again to Wyler, the whole object expressed throughout the document is the desire to reinforce while also providing an anti-slip surface. See for example Col. 1, lines 51-54. In addition, as clearly taught in Col. 5, lines 36-61, if other elements are to have an anti-slip treatment, reinforcing bars 32 must be incorporated therein so that both functions, i.e., reinforcement as well as anti-slip, are provided. Nowhere does Wyler ever suggest scuffing the actual deck surface as required by each of Appellant's independent claims.

Moreover, the Examiner asserts in Section 11 that:

"[t]he claims of record are utility claims. It is noted that in a utility claim, the method of making carries no patentable weight. The references applied teach all the structure as claimed."

Initially, as noted above, the combination of references do not in fact "teach all structure as claimed." Notwithstanding, Appellant further finds confusing the Examiner's comment that the present claims are "utility claims." Appellant acknowledges that this is a utility patent

application (as opposed to a provisional or design application), but is unsure how this is germane. Clearly claims 22, 26 and 31 are directed to a method of making a pallet. Appellant takes issue with the Examiner's statement that the method steps forming the body of each claim are to be given no patentable weight because they are "utility claims."

Finally, Appellant reiterates that only Appellant's claimed invention recognizes the advantages of forming a pallet with slip-resistant **deck surfaces** by **mechanically scuffing the desired deck surfaces**. Again, Appellant points out that none of the references ever suggest scuffing a deck surface of a pallet. Therefore, the Examiner's statement that "scuffing pallet surfaces would be an easy and non-expensive way to provide anti-skid surfaces" is simply not supported by any of the references made of record, and such statements appear to be made in hindsight. As such, independent claims 22, 26, 31, and 36 are believed to be patentably distinguishable over the combination of references relied on by the Examiner.

Thus, Appellant respectfully asserts that the recited rejections of claims 22-38 under 35 U.S.C. §103(a) are in error, and reversal is respectfully requested.

No fees are believed to be due in connection with this paper. Please charge any fee or credit any overpayment in connection with this filing to Deposit Account No. 50-1984.

Respectfully submitted,

William P. Apps et al.

Date: October 22, 2001

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